

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
 : CR-15-0087
 -against- :
 : United States Courthouse
ARNOLVIN UMANZOR VELASQUEZ, : Central Islip, New York
 :
 Defendant. : November 15, 2016
 : 2:48 p.m.
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TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE JOSEPH F. BIANCO
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
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1 (The following took place at 2:48 p.m.)

2 THE CLERK: Calling case 15-CR-87, USA vs
3 Umanzor Velasquez.

4 Counsel, please state your appearance for the
5 record.

6 (Appearances above noted.)

7 THE COURT: Mr. Umanzor Velasquez is present
8 with the assistance of the Spanish interpreter who is on
9 staff here. I'll just ask that she identify herself for
10 the record.

11 THE INTERPRETER: Good afternoon, your Honor.
12 Maya Gray, Spanish interpreter.

13 THE COURT: Good afternoon, Ms. Gray.

14 We are here for sentencing. Are both sides
15 ready to proceed?

16 MR. DURHAM: Yes, your Honor.

17 MR. VILLANUEVA: Yes, your Honor.

18 THE COURT: I just want to review the
19 documentation that the court has and make sure I received
20 everything you have submitted. I also want to make sure I
21 have everything that is before the court.

22 I did receive, obviously, the presentence
23 investigation report and the recommendation of 45 years in
24 jail.

25 I received Mr. Villanueva's sentencing letter of

1 November 1st with attached letters in support of the
2 defendant, as well as certain records to establish his
3 working in Georgia, and other exhibits.

4 I have received the government's November 14th
5 letter and exhibit attaching certain tattoos.

6 And I have received a letter from the defendant
7 which sounds like a motion for 30 years. And probation
8 was written on top, but it was filed in April 4th of 2016.
9 Obviously I have considered that as well.

10 Anything else the Court should have in
11 connection with sentencing from the government?

12 MR. DURHAM: No, your Honor.

13 MR. VILLANUEVA: No, your Honor.

14 MR. DURHAM: And Mr. Villanueva, have you and
15 your client seen the presentence report and the
16 recommendation?

17 MR. VILLANUEVA: We have, your Honor.

18 THE COURT: And did you have sufficient time to
19 discuss it?

20 MR. VILLANUEVA: Yes, I have.

21 THE COURT: Let me just confirm that.

22 Mr. Umanzor Velasquez, have you had sufficient
23 time to; first of all, have you received and reviewed the
24 presentence report and the recommendation?

25 THE DEFENDANT: Yes.

1 THE COURT: And have you had sufficient time to
2 discuss it with Mr. Villanueva?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay, before I deal with objections,
5 just one thing I want to clarify based on my own reading
6 of the presentence report. Obviously I want to make sure
7 we're all on the same page.

8 The defendant pled guilty in connection with the
9 murder of the Ceron brothers. The presentence report also
10 makes reference to an attempted murder of John Doe Number
11 1 in April of 2011. And I want to make sure we're on the
12 same page. Understand I am considering that as relevant
13 conduct in connection with this sentencing. However, I
14 just want to confirm that although it is mentioned in
15 connection with the Ceron brothers' murder, the attempted
16 murder of John Doe Number 3, based upon a description in
17 the presentence report, it doesn't indicate any action by
18 Mr. Velasquez. So I would not consider that as relevant
19 conduct. Because for example, if he fired any shots in
20 connection with the shooting of John Doe Number 3.

21 So I just want to make sure we're all on the
22 same page on both of those things.

23 MR. DURHAM: I don't think he actually has
24 culpability, however, for purposes of sentencing. We're
25 not asking the Court to rely on that. We're not seeking a

1 Fatico Hearing to prove the defendant's guilt in
2 connection with that offense.

3 THE COURT: Okay.

4 Mr. Villanueva, do you agree and understand, and
5 does your client understand I'm sentencing on the murder
6 of the Ceron brothers as well as the attempted murder of
7 John Doe Number 1, correct?

8 MR. VILLANUEVA: We do understand that.

9 THE COURT: So that is what I'm considering.
10 I'm not considering, for reasons stated, that it can't be
11 proved by a Fatico Hearing and the defendant is not
12 agreeing to any consideration of any culpability with
13 respect to John Doe Number 3. So I'm not considering
14 that.

15 Okay, do you have any objections to the
16 presentence report?

17 MR. VILLANUEVA: No, your Honor.

18 THE COURT: Does the government have any
19 objections to the presentence report?

20 MR. DURHAM: No objection, judge.

21 Just one point of clarification. On page 1 it
22 has a June 10, 2015 arrest date. I believe that is the
23 day he arrived in the Eastern District. He was actually
24 arrested on May 19, 2015 in Georgia.

25 THE COURT: Is that accurate, Mr. Villanueva?

1 MR. VILLANUEVA: That is correct.

2 THE COURT: So I amend it at counsel's request
3 to an arrest date of May 19, 2015.

4 With that correction I adopt the information
5 contained in the presentence report as factual findings by
6 the Court pursuant to United States vs Booker. The
7 sentencing guidelines are advisory. They're only one
8 factor the Court is to consider among all of the statutory
9 factors.

10 The total offense level in the presentence
11 report is a 42. The defendant has no criminal history, so
12 it's Criminal History Category I, which generates the 360
13 months to life advisory range.

14 Do both sides agree that is the calculation of
15 the advisory range?

16 MR. DURHAM: Yes, your Honor.

17 MR. VILLANUEVA: Yes, your Honor.

18 THE COURT: I adopt the calculation in the
19 presentence report in its entirety despite a summary in
20 connection with Count 22, the use of a firearm to murder
21 Enston Ceron. That's a level 43. Count 25, use of a
22 firearm to murder Ricardo Ceron. That's also a level 43.

23 In a multi-count adjustment 2 levels are added,
24 so a level 45. And since the defendant pleaded guilty in
25 a timely fashion, he is entitled to a 3 level reduction

1 for timely acceptance of responsibility, which results in
2 the total offense level of 42, resulting in an advisory
3 range of 360 to life, 360 months to life. Obviously it's
4 only advisory. It's only one factor the Court is to
5 consider among all of the other statutory factors.

6 And I'll now hear from both sides as far as any
7 facts you wish to address, or anything you wish to say.
8 Starting with Mr. Villanueva.

9 MR. VILLANUEVA: Thank you.

10 Would the Court mind if I go to the podium?

11 THE COURT: Sure. You may remain seated if you
12 want to.

13 MR. VILLANUEVA: Okay, thank you very much.

14 May it please the Court.

15 As your Honor just pointed out, Mr. Velasquez
16 entered a guilty plea in this case and in so doing
17 accepted responsibility for his actions, thereby saving
18 the Court considerable time and resources, as well as
19 resources for the prosecution.

20 Mr. Velasquez is 23 years old today. He is a
21 young man who is married, the father of three children,
22 and has a large family who is sitting in this courtroom
23 today in support, right behind us on my right. His mom,
24 his dad, his siblings, and extended family are all here in
25 support of Mr. Velasquez.

1 As your Honor knows from our sentencing
2 submission we have asked the Court to consider various
3 sentencing factors in mitigation. We have asked the Court
4 to consider the fact that he entered a guilty plea as a
5 factor, and the fact that he did so publicly in what we
6 believe and submit is a fact of remorse and an act of
7 redemption.

8 In addition, your Honor. We ask that you
9 consider his age at the time of his conduct, and his age
10 at the time that he joined the gang, which we believe it
11 is significant for the reasons set forth by the United
12 States Supreme Court in cases beginning or culminating
13 with Miller vs Alabama.

14 We have also asked the Court to consider in
15 mitigation what we termed as the perfect duress and
16 coercion. And we believe the facts and the circumstances
17 of this case demonstrate coercion.

18 And lastly and most significantly we would ask
19 the Court to consider Mr. Velasquez demonstrated
20 post-conduct rehabilitation. And we believe those
21 factors, in balance with the heinousness of this crime,
22 and it was very serious and heinous, and his age; we
23 believe the Court has the room and the discretion to
24 impose a sentence that is sufficient but not overly harsh,
25 and that demonstrates to the community just punishment for

1 Mr. Velasquez, but also that gives him hope for what he
2 has demonstrated, and that, is rehabilitation, his own
3 rehabilitation.

4 We raised the post-conduct rehabilitation, age
5 and duress, not to minimize his conduct, but to give this
6 Court a sense of the circumstances of his life, and the
7 circumstances surrounding the commission of the crime. He
8 should not be punished more severely because he provided
9 the Court with the information the Court, we believe,
10 needs to make a careful sentencing decision.

11 As the presentence report indicates, your Honor,
12 the Ceron brothers, there was an order to kill the Ceron
13 brothers because one of the Ceron brothers, Enston, was
14 distancing himself from the gang. And that is a
15 significant fact. Because the fact that he was distancing
16 himself from the gang led the leadership of the gang to
17 consider and to order his murder. And the gang also
18 ordered the murder of his brother, not because the brother
19 was distancing himself, but because the brother was a
20 committed gang member, and they feared retribution.

21 I think we should stop right there and look at
22 that fact and that fact alone to show what Mr. Velasquez
23 was laboring under. He was laboring under a real life
24 situation where it was kill or be killed. If they were
25 going to kill the brother for distancing himself, what

1 would they do to a guy would said, no, to them? That is a
2 real life circumstance.

3 Now the government will argue that he knew what
4 he was getting into when he joined the gang. And that is
5 an appropriate argument. And the Court should consider it
6 for what it's worth. But he was 17 years old when he
7 joined the gang. And what we do know from Miller vs
8 Alabama, and all of the other cases about age, is that age
9 has hallmark characteristics that affect a person's
10 blameworthiness, that affect a person's ability to assess
11 risk, that affects his ability to extricate himself from
12 dangerous and terrible circumstances.

13 And we ask your Honor to consider the Supreme
14 Court's instructions to both the District Court and to all
15 of us, that young people are different. And we submit to
16 this Court that a 17 year old kid could not, and did not,
17 and my client did not assess that risk properly. And when
18 he was an 18 year old guy, young man, facing that choice
19 of kill or be killed, he killed. And he stands here sorry
20 for that, and remorseful for that.

21 And what did he do afterwards? And that's the
22 important thing. What did he do? If he was a committed
23 gang member he would have, and if the government is to
24 believe that his entire set was dismantled, that what he
25 would have done as a committed gang member was to go to

1 another set. And committed gang members don't stop being
2 a gang member. A committed gang member continues on and
3 on, and he would have done that.

4 But instead Mr. Velasquez became a father. He
5 got married, obtained legitimate employment, on the books
6 employment, not one job but two. But he didn't he stop
7 there, your Honor. He filed taxes. He applied for
8 healthcare. He left the environment where the gang
9 thrived and moved to Georgia. And in Georgia he had two
10 jobs. And in fact when he was arrested in this very case
11 on May 19th he was on his way to his second job. And he
12 demonstrated that to your Honor.

13 So what we have, we have a guy who has shown, a
14 young man who has shown through his very actions a desire
15 to rehabilitate himself, a desire to change his life. And
16 what other indications does the Court have that he has
17 done that? In the almost four years there was no arrest.
18 In the almost four years, between the murder and today,
19 there was no gang activity that the government can point
20 to. He didn't do anything else. And also, your Honor,
21 when he was in the Nassau County Jail for over, almost two
22 years, he has no disciplinary actions, none. And I
23 believe from this Court's experience, and these types of
24 cases, that is pretty rare and pretty unique. That is a
25 further action and reflection of Mr. Velasquez's desire to

1 change his life, which he actually did.

2 Now the Court I'm sure is concerned about, as
3 the government is, that he attended meetings. And that
4 his actions after the shooting of the Ceron brothers is
5 questionable.

6 But I ask the Court to consider the following.
7 The fact that he participated in gang meetings and
8 recounted his crimes, and got a gang tattoo, does not
9 negate as imperfect as duress and coercion are on him. To
10 state the obvious, duress does not end at the killing of
11 the brothers.

12 Mr. Velasquez's ongoing enthusiastic
13 participation in the gang should be expected because he
14 was very much aware what would happen to him if he wasn't
15 enthusiastic, if he didn't play a role, if he didn't show
16 that commitment. He would have ended up like the Ceron
17 brothers, I submit to the Court.

18 Now your Honor, I'm not asking that the Court
19 apply the imperfect duress and coercion defense in toto.
20 We believe that it's a mitigating factor, that you can
21 consider it. And if you consider that, and consider the
22 fact that after the Ceron brothers, there's very little,
23 if any, contact between Mr. Velasquez and the gang. And
24 in four years of conduct outside of the gang, his
25 legitimate employment, his lifestyle has changed, the fact

1 that he is married and committed to his family, we believe
2 those are the legitimate sentencing factors that you can
3 consider.

4 So what have we got? We have a young man who
5 was in his teens at the time of this crime. We have a
6 young man who came into this country not speaking the
7 language, and what is unfortunately, introduced into a
8 culture that was destructive. And he felt that
9 destruction. He understands that his conduct is going to
10 take the majority of his life away from him. And he is
11 ready to accept that. He understands that. And that is
12 what he did when he accepted this guilty plea here. He
13 knows that he is facing an enormous amount of time in
14 jail. And he deserves it, and he understands that.

15 But he is asking this Court to give him some
16 hope. He is asking this Court to provide some hope, not
17 because of his age, but because of his demonstrated
18 activities, his demonstrated rehabilitation, his acts in
19 furtherance of trying to be moral and peaceful, which he
20 has done; the fact that he is a family man now, the fact
21 that he has worked two jobs. The fact that he has
22 legitimate employment and a legitimate lifestyle is
23 something that he is asking this Court to consider, to
24 give him hope.

25 And we believe that a sentence of 30 years to

1 life or a 30 year sentence is such a significant sentence
2 that it does give him that hope. And it does show the
3 community and demonstrates to the community the
4 seriousness of this offense.

5 But it also demonstrates that we understand that
6 young people are different. We do understand that young
7 people who get involved in these, this criminal activity
8 sometimes they don't get involved with their eyes open,
9 and a real understanding of what that means. And that
10 they can change. And he can change, and he has changed
11 already. And he is asking you to impose a sentence that
12 reflects his change.

13 Now the government is indicating or suggests
14 that the maximum sentence is required to address similar
15 crimes, crimes that it knows occur regularly in this area.
16 However, Courts have been handing out excessive and very
17 lengthy sentences. And while that may be satisfying, it
18 is really not having a deterrent effect, as this Court is
19 well aware of the recent violent crimes in this area. It
20 may be time that we view punishment and rehabilitation in
21 another way. I'm not sure. But I do know that I am sure
22 of this; that Mr. Velasquez has demonstrated an ability to
23 live a peaceful and productive life.

24 While he should be punished, and we agree to
25 that, we ask respectfully that the Court consider his

1 post-conduct, rehabilitation conduct, his age and the
2 horrific circumstances that he labored under as an 18 year
3 old when pressed and pushed to make the decision to be
4 involved in the Ceron murders. It's a difficult question.

5 And lastly, the suggestion that society be
6 protected from Mr. Velasquez, is less than accurate. He
7 spent four years demonstrating that he is going to live a
8 productive life. And we ask that the Court consider that
9 four years and that change in his life as a significant
10 mitigator, and consider it in imposing a sentence that we
11 believe will demonstrate to the community the seriousness
12 of this crime, but also give the community and young
13 people like Mr. Velasquez, other young people, that if
14 you're going to turn your, willing to turn your life
15 around, if you're willing to demonstrate that you can work
16 and live and get married and raise a family and live a
17 productive life, that courts will take that into
18 consideration. I think that is also important.

19 May I have a moment, your Honor?

20 THE COURT: Yes.

21 (There was a pause in the proceedings.)

22 MR. VILLANUEVA: I appreciate the time the Court
23 has given me. And I know that sometimes sentencings are
24 emotional and they are difficult. I know it's difficult
25 for the Court as well as the parties. And I appreciate

1 the time.

2 Thank you.

3 THE COURT: Before I hear from your client, I
4 just want to ask you one question on the imperfect duress
5 defense argument.

6 MR. VILLANUEVA: Yes.

7 THE COURT: And obviously that is something the
8 Court can consider, but I just, I don't understand.
9 Assuming that I accept your version of why he left the
10 area and established himself. Isn't that an argument
11 against your imperfect duress defense? In other words,
12 you pointing out to me that shortly after the Ceron
13 murders he extricated himself from the gang. So the
14 obvious question would be, doesn't that prove that he
15 could have done that before the Ceron murders, if in fact
16 he wanted to do that? He could have, he was involved in
17 the attempted murder in April. So he certainly knew what
18 the nature of the gang was by that time. Why didn't he
19 extricate himself then? And why didn't he before the
20 Ceron murders?

21 MR. VILLANUEVA: And that is a fair question,
22 your Honor, a very fair question. And the answer to that
23 is, that is a common sense response.

24 Remember, your Honor, he was between 17 and 18
25 years old. And while we expect people to act rationally,

1 and be able to assess their conduct and their
2 consequences, what we do know from Miller and Alabama and
3 those other cases, is that young people don't do that.
4 That is the reason why they're less blameworthy. That is
5 the reason why the Supreme Court has said we need to treat
6 them differently.

7 And I submit to this Court that if we hold him
8 to that standard of reasonableness, then we run afoul to
9 the Supreme Court's jurisprudence for young people. And I
10 believe that the answer is just very basic. That as a
11 young person, he is a typical 18 year old who doesn't
12 assess the risk, who is immature, who doesn't understand
13 the consequences of his actions, who takes time to
14 extricate himself from a dangerous and difficult
15 situation. Those are comments and observations that the
16 Supreme Court lists in their cases.

17 And I think they were speaking to young
18 Mr. Velasquez, and speaking to his predicament and his
19 circumstances. And I think he is just that typical
20 person. He didn't get it the first time. But he
21 certainly got it the second time. And when I say the
22 second time, I'm saying at the time of the Ceron murders.

23 And I want to point out to the Court, while the
24 government is asking for Mr. Velasquez to be held
25 accountable for the shooting of the, what I call the good

1 samaritan, it's important to note that he didn't shoot
2 that gun at a good samaritan. And that seems to be a
3 suggestion that he was then walking the other way. That
4 the trauma of that incident was the light that he needed.
5 The trauma of what he did was so horrific that he did go
6 the other way. And he did turn the corner. And we do
7 submit that to the Court.

8 I hope I have been responsive to your Honor's
9 question.

10 THE COURT: Yes.

11 MR. VILLANUEVA: Thank you.

12 THE COURT: Mr. Velasquez, you also have a right
13 to speak at your sentencing. You can remain seated. I
14 did obviously review your letter. But you also have the
15 opportunity to speak today if you wish to say anything.

16 THE DEFENDANT: Yes, your Honor.

17 With your Honor's permission, first of all, I
18 ask the family members of the deceased to forgive me from
19 the bottom of my heart. Because I have also made my
20 family suffer; my daughters, my mother, my father, my
21 wife. And I apologize to them.

22 I am suffering because I can not see my family.
23 But I know now that I cannot see them due to my own
24 actions. I am responsible, and that is why they suffer.

25 I distanced myself from the gang. I did not

1 want to participate in bad things. I wanted to change my
2 life. I am sorry for what I did. I am sorry from my
3 heart. And I ask you, your Honor, to have pity on me when
4 you sentence me.

5 And once again I ask your Honor to forgive me.
6 And may God bless you.

7 THE COURT: Let me respond to what you said
8 today. I'm giving you credit for accepting responsibility
9 for what you have done, for showing remorse. So that
10 deserves some credit.

11 There are people involved in gang activity who
12 sit there even on the day of sentencing and still don't
13 show remorse. They just show ongoing allegiance to the
14 gang. So the fact that you have done that deserves some
15 credit.

16 As you know, your lawyer obviously recognizes
17 that there are other things I have to consider; the harm
18 that you have done. And I see your family back there. I
19 know your family and you understand how this affects your
20 children, and the problem this creates for them. But the
21 Ceron brothers are never going to see their family again
22 because of your conduct.

23 So you caused a lot of harm, two people lost
24 their lives. And the sentence has to reflect that harm
25 that you have done.

1 But I will give you some credit for your
2 acceptance of responsibility and your remorse that you
3 have shown here today.

4 All right, I'll hear from the government.

5 MR. DURHAM: Your Honor, the defendant has shown
6 some remorse. However, he continues to refer to his
7 suffering and the suffering of his family, which is, as
8 the Court pointed out, not remotely on par with the
9 suffering of the Ceron family and so many other families
10 who suffer from the violence created by the MS-13.

11 This defendant came to this country when he was
12 12 years old. He lived here for five years. He had a
13 tremendous education, employment opportunity, but instead
14 of taking advantage of those opportunities he joined the
15 MS-13, not when he was 12, not when he was 13, but when he
16 was 17 years old. He joined the gang knowing full well
17 what the rules of the gang were, what they would require
18 of him', specifically violence, violence against rival
19 gang members, violence against MS-13 members who violated
20 the rules.

21 We can not have a situation where people join
22 these gangs knowing the rules throughout, and the horrific
23 acts of violence, and then blame the rules of the gang for
24 the acts they committed.

25 And your Honor asked Mr. Villanueva a very

1 simple question. He said, well I'll give you a common
2 sense answer. And he answered it and talked for about
3 five minutes.

4 The common sense answer is, that this defendant
5 could have fled and could have lived a different life at
6 any point before he committed the murders. These murders
7 were not spontaneous events. They were not something that
8 happened just the night of December 17th or the 18th.
9 They talked about killing the Ceron brothers for weeks, if
10 not months.

11 This defendant was at multiple meetings when
12 this was discussed. He had multiple side conversations
13 with other members of the gang. He knew this was the
14 plan. He knew he was a member of the team that was
15 supposed to carry it out. At any point he could have
16 left. He could have left the gang. He could have gone to
17 the police. He could have done many, many different
18 things. Instead he continued to go to these meetings, he
19 agreed to carry out the murder. He went to a party on
20 December 17th, and then he got in the car and he put a gun
21 to Ricardo Ceron's head and he pulled the trigger.

22 And after that he continued to associate with
23 the gang up until the point where other gang leaders were
24 arrested and incarcerated. He then fled out of
25 self-interest, no other reason.

1 He went to El Salvador. And he was in El
2 Salvador and he touched base with gang members then. He
3 left El Salvador and he returned to the United States. He
4 didn't come to New York, he moved to Georgia. He moved
5 because of self-preservation, not out remorse, not out of
6 rehabilitation. He didn't want to go to jail.

7 We are asking the Court to hold him responsible
8 for the crimes he committed and to sentence him to 30
9 years posed by the defense, 15 years for each murder in
10 the government's view is insufficient.

11 We're asking the Court to impose a sentence of
12 45 years for all of the 3553(a) factors, and that the
13 Court consider the defendant's age, and consider the other
14 factors as well, specifically the circumstances of this
15 offense. Like I said, it wasn't a spontaneous event. It
16 wasn't impulsive. It was a preplanned, cold-blooded
17 murder.

18 THE COURT: Thank you, Mr. Durham.

19 I'm now going to state the sentence I intend to
20 impose. And I'll give the lawyers a final opportunity to
21 make any legal objection before I impose the sentence.

22 In imposing this sentence I have carefully
23 considered the factors that have been set forth by
24 Congress in Section 3553(a). Those factors include, among
25 others, and I'm not going to go through all of them now,

1 but they include among others the nature and circumstances
2 of the offense, the history and characteristics of the
3 defendant, the need for the sentence imposed to reflect
4 the seriousness of the offense, to promote respect for the
5 law, and to provide a just punishment for the offense. I
6 also need to afford adequate deterrence to criminal
7 conduct, and to protect the public from further crimes by
8 the defendant.

9 Among the other factors that I have considered;
10 the sentencing guideline issued by the sentencing
11 commission, as well as included the advisory range in this
12 case, as well as the applicable policy statements that
13 have been issued by the sentencing commission. I also
14 considered the need to avoid unwarranted sentencing
15 disparity among similarly situated defendants. And I have
16 sentenced a number of individuals for gang-related
17 murders. I am certainly cognizant of trying to insure
18 that the sentence is proportional to other defendants who
19 are similarly situated.

20 The restitution factor, does the government have
21 any restitution?

22 MR. DURHAM: No, your Honor. The victims'
23 family did not file information for us to do so.

24 THE COURT: And the Court is also considering as
25 both sides mentioned, and I think it is appropriate to

1 consider, although I'm assuming Mr. Velasquez was not a
2 juvenile at the time this offense. I have considered more
3 the Alabama factors because he was 18 at the time of the
4 offense, and certainly some of the factors the Supreme
5 Court mentioned in Miller could apply to someone at the
6 age of 18. And I have assessed those factors in the
7 context of this defendant in this case.

8 And having considered all of those factors, in
9 my discretion I intend to impose a sentence of 40 years in
10 prison, 480 months. And I'm going to explain the reasons
11 for that sentence.

12 I have given the sentence careful thought. And
13 I can't under-emphasize -- excuse me -- I can't
14 overemphasize the heinous nature of this criminal conduct.

15 First, it was the attempted murder of John Doe
16 number 1 which involved the defendant firing into a group
17 of people hitting John Doe number 1 in the back. What
18 were these individuals doing that warranted him shooting
19 at them? They were socializing on Maryland Avenue outside
20 their home. And because the defendant and some gang
21 members were out for, quote, hunting for what they believe
22 are rival gang members, John Doe number 1 was shot. But
23 fortunately he survived that shooting. The defendant
24 could then instead of, after a violent thing like that,
25 dissociating himself from the gang he engaged in this

1 horrific execution of two brothers in a car in
2 cold-blooded execution. The sentence that the Court
3 imposes has to reflect the loss of two lives in December
4 of 2011, and the injury to John Doe number 1.

5 The Court notes that Enston Ceron was killed
6 because according to the gang he was distancing himself,
7 as both sides noted. He wasn't violent enough. And for
8 that they executed him. I view the defendant as an
9 extremely heinous individual. I feel the public needs to
10 be protected from him.

11 I also am considering the need for general
12 deterrence. I don't know what impact the Court's
13 sentences have on individuals who are involved in gang
14 activity, including other individuals of Mr. Velasquez's
15 age who are involved in violent activities, or who are
16 thinking about engaging in this type of activity. But
17 that does not dissuade me from the fact that that message
18 needs to be sent.

19 As Mr. Durham noted in his sentencing letter,
20 this Court alone has watched convictions in the order of
21 two dozen murders over the past several years by this
22 violent criminal enterprise, MS-13, all over Long Island
23 in various communities. And a message needs to be sent
24 that if you're involved in that gang activity, and if you
25 engage in violence including violence as horrific as this,

1 executing two people on the streets of Long Island, you're
2 going to go to jail for a long time, whether you're 20,
3 whether your 22, or whether you're 18 as in the
4 defendant's case. The need for general deterrence to
5 deter this gang is substantial.

6 I did consider Mr. Villanueva's, as he always
7 does he did an excellent job in his arguments to the
8 Court, and various mitigating factors. I'm not giving
9 credit for this imperfect arrest offense for reasons that
10 are indicated in my questioning. The defendant, as
11 Mr. Durham noted, the defendant joined the gang at 17,
12 certainly under the age of 18. But it's not 13 or 14, as
13 it is when some individuals who join the gangs. And to me
14 most importantly, as it has been pointed out during my
15 questioning, getting involved in a violent act in April of
16 2011 the defendant did not disassociate himself from the
17 gang and move to another location. Whether or not if he
18 could have advised law enforcement is a different
19 question. But at a minimum to disassociate himself from
20 the gang, move out of Long Island, go somewhere that he
21 felt like because of the rules of the gang he chose to
22 join, that he should need to engage in violent activity.
23 And he didn't do that.

24 Instead he was involved in planning, and as
25 Mr. Durham notes this was not a spur of the moment

1 decision when someone handed him a gun and said, we need
2 you to shoot the Ceron brothers. It was explained about
3 this. There was discussion about this and he stuck around
4 to be the shooter, one of the two shooters in that
5 execution. Nobody had a gun to his head. He could have
6 left the area.

7 I don't believe that the Miller factors provide
8 sufficient explanation for his decision to be involved in
9 that double homicide after having been involved in an
10 attempted murder just a few months before that. Even 18
11 year olds obviously are aware of the consequences of that
12 type of action, how wrong those actions are, how evil they
13 are. And despite the fact that their judgment may not be
14 that of an adult, they certainly are aware of the nature
15 of that type of conduct. And it is not in my view an
16 explanation for why the defendant continued to be involved
17 in the violent activity of this gang.

18 I also note, I think this is obvious, but I just
19 want to emphasize. There is no secret when you join the
20 MS-13 gang where you learn along the way, we are going to
21 ask you to commit acts of violence. If you don't want to
22 commit violence you could be subject to violence yourself.
23 The MS-13 gang only exists for violence. It's not like
24 it's this one activity within the group that involves
25 nonviolence and this other activity that involves

1 violence. The MS-13 gang only exists for violence.
2 Everybody who joins that gang is aware of what the
3 objective of that gang is. And certainly even at the age
4 of 17 the defendant knew when he joined that gang the only
5 reason to join that gang is to engage in violent activity.
6 So it should come at no surprise to him that they asked
7 him to carry out murders on behalf of the gang.

8 As I said, I considered his age and the other
9 factors. I don't believe they warrant a substantially
10 reduced sentence in this case for the reasons I have
11 already indicated. And the factors, I think overwhelm any
12 of those factors set forth in the Miller case.

13 I have considered him leaving the area.
14 Obviously I can't determine what was in the defendants
15 mind. The government has a different reason for him
16 leaving the area in terms of avoiding prosecution and gang
17 members were being arrested. But I do believe he deserves
18 some credit for not being involved in criminal activity in
19 the years after the Ceron murders.

20 There is no indication that he made an attempt
21 to rejoin the gang. The government mentioned contact with
22 gang members in El Salvador, but I am not going to
23 consider that. There is nothing in the record for me to
24 consider that. So I am considering that mitigating
25 factor. Although again, it is overwhelmed by the loss of

1 life here and all of the other factors that I have already
2 gone into.

3 So I considered giving him a higher sentence as
4 requested by the government. But I believe it was a
5 little too high given the factors I pointed to, acceptance
6 of responsibility and the fact that he did for some period
7 of time start working and had a relationship with an
8 individual, a woman, and had children, and appears to be
9 not engaged in any type of criminal activity for that
10 period of time.

11 I certainly considered giving him less. In my
12 discretion, and I know Mr. Villanueva is advocating 30
13 years. But I don't believe anything less than 40 years
14 would properly reflect and balance the need to find a just
15 punishment for the execution of two individuals and the
16 attempted murder of a third individual and the need for
17 deterrence and protection of the public from Mr. Velasquez
18 and from other gang members to hopefully send the message
19 of general deterrence that is sent by this sentence.

20 The final factor that I want to make reference
21 to is the issue of avoiding sentencing disparities among
22 similarly situated defendants. Again, I have sentenced
23 numerous MS-13 gang members on murders convictions;
24 juveniles, adult. And I think this sentence is
25 proportional to the other sentences I have imposed. I

1 have imposed some life sentences, some of them were
2 mandatory life, but some of them were discretionary life
3 sentences, even for juveniles. But those sentences, that
4 involved the execution of a 19 year old woman and a two
5 year old boy. And for all of the reasons I indicated for
6 those sentences I believe that conduct warranted that
7 increased punishment.

8 In terms of other sentences in this range for
9 other gang members involved in murders, I have sentenced
10 them, by way of one example -- was involved in the
11 execution of an individual, a guard at a restaurant, a
12 bar. I sentenced him to 405 months in jail, which is
13 obviously less than this sentence. But I believe this
14 sentence involves a double homicide and attempted murder
15 and warrants a higher sentence than that particular
16 sentence.

17 But in short, I'm not going to go through every
18 other defendant. I believe this sentence is proportional
19 to other sentences I have imposed on other defendants
20 under similar circumstances, under the factors that I have
21 mentioned. So that is how I arrived at this sentence.

22 I intend to impose 40 years on each count
23 concurrent to each other. I do intend to impose five
24 years of supervised release, although the defendant may be
25 deported or removed from the United States. Given his

1 ties to the country, including children, and obviously
2 this is a long sentence, but given his ties to the United
3 States, his family members, even assuming he is removed
4 from the United States because of this conviction, I
5 believe a period of supervised release is necessary to
6 insure that he does not attempt to return to the United
7 States to reestablish his ties. Because doing so would be
8 not an additional crime, but a violation of the conditions
9 of release. And if he is in the United States for any
10 period of time, he should be under supervision given his
11 criminal activity and the special conditions that would be
12 necessary to insure that he doesn't return to gang
13 activity. So I want to impose those, as well as in the
14 unlikely event that he stays in this country legally for
15 any period of time.

16 So that is the sentence I intend to impose. And
17 I intend to impose no fine. I do intend to impose a \$200
18 special assessment, \$100 on each count. I'm imposing no
19 fine because the defendant has no ability to pay a fine.

20 I intend to impose no restitution.

21 Any legal reason why I cannot impose that
22 sentence?

23 MR. DURHAM: No, your Honor.

24 THE COURT: Mr. Velasquez?

25 MR. VILLANUEVA: No, your Honor.

1 THE COURT: Mr. Velasquez, the judgment of this
2 court in its discretion is that you be sentenced to the
3 custody of the Attorney General through the Bureau of
4 Prisons to a term, total term of imprisonment of 40 years
5 or 480 months, consisting of 480 months on Count 22, and
6 480 months on Count 25, to run concurrently to each other.

7 I impose five years of supervised release on
8 each count which runs concurrently to each other under
9 operation of law. I impose the standard conditions and
10 the following five special conditions.

11 1. You shall not possession a firearm,
12 ammunition or destruction devise.

13 2. You shall submit your person and property;
14 house, residence, vehicle, computers as defined in 18 USC
15 Section 1030(e) or other electronics, communications or
16 data storage devices or media or office to a search
17 conducted by a United States probation officer. Failure
18 to submit to a search may be grounds for revocation of
19 release.

20 You shall warn any other occupants that the
21 premises may be subject to searches pursuant to this
22 condition. An officer may conduct a search pursuant to
23 this condition only when reasonable suspicion exists that
24 you have violated a condition of supervision, and the area
25 to search contains evidence of this violation. Any search

1 has to be conducted at a reasonable time and in a
2 reasonable manner.

3 3. You shall not associate in person, through
4 mail, telephone or electronic communication with any
5 individual with an affiliation to any organized crime
6 groups, gangs, or other criminal enterprise, pursuant, but
7 not limited to a prohibition list provided by the US
8 Probation Department, nor shall you frequent any
9 establishment or other locale identified by the US
10 Probation Department as a location where these persons or
11 groups may be.

12 4. You shall cooperate with and abide by all
13 instructions of immigration authorities.

14 And 5. If deported you may not reenter the
15 United States illegally.

16 I impose no fine. And I impose a \$100 special
17 assessment on each count for a total of \$200. And I
18 impose no restitution.

19 Mr. Umanzor Velasquez, I need to advise you of
20 your statutory right to appeal.

21 To the extent that you did not waive your right
22 to appeal in your plea agreement, you have a statutory
23 right to appeal your conviction and sentence. If you can
24 not afford to pay the cost of the appeal you may apply to
25 appeal forma pauperis. If you could not afford an

1 attorney, one will be furnished to represent you on
2 appeal. The notice of appeal must be filed within 14 day
3 of the judgment of conviction.

4 Mr. Durham, do we need to dismiss any open
5 counts?.

6 MR. DURHAM: We do, your Honor.

7 We move to dismiss any open counts in the second
8 superseding indictment, as well as the first superseding
9 indictment.

10 THE COURT: All right, all the open counts are
11 dismissed.

12 I'll say this to the defendant's family who are
13 here today. I know you support the defendant. I don't
14 want my substantial sentence here to be a reflection that
15 I didn't consider their letters and their support of the
16 defendant. I understand that they love the defendant and
17 support him. But the harm done and the other factors that
18 I mentioned just overwhelmed the fact that he has family
19 to support him when he gets out.

20 I expect them be there when he gets out. But
21 these other factors that I pointed to warrant this
22 sentence in my discretion. But I certainly understand
23 their support of the defendant. Certainly he is lucky to
24 have them, his family members.

25 All right, is there anything else from the

1 government?

2 MR. DURHAM: No, your Honor. Thank you.

3 THE COURT: Anything from the defense?

4 MR. VILLANUEVA: No, your Honor.

5 THE COURT: All right, thank you.

6 (The proceedings were concluded at 3:40 p.m.)

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